

REMARKS

The present amendment is submitted in response to the Office Action dated April 9, 2004, which set a three-month period for response, making this amendment due by July 9, 2004.

Claims 15-31 are pending in this application.

In the Office Action, claims 15-17, 20, 21, and 31 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,265,270 A to Stengel et al in view of U.S. Patent No. 5,339,455 A to Vogt et al and U.S. Patent No. 5,526,398 A to Okada et al. Claims 18, 19, 26, and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Stengel et al in view of Vogt et al and Okada et al and further in view of U.S. Patent No. 5,369,803 A to Hirasawa et al. Claim 22 was rejected under 35 U.S.C. 103(a) as being unpatentable over Stengel et al in view of Vogt et al and Okada et al and further in view of U.S. Patent No. 5,831,256 to De Larminat et al. Claim 23 was rejected under 35 U.S.C. 103(a) as being unpatentable over Stengel et al in view of Vogt and Okada and further in view of U.S. Patent No. 4,430,609 to Van Kessel et al. Claims 24, 25, and 28-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Stengel et al in view of Vogt et al and Okada et al and further in view of an Examiner's official notice.

The Applicants respectfully disagree that the cited reference combinations make obvious the subject matter of claims 15-31.

As previously argued, the primary reference to Stengel et al fail to show the specific parameter to be changed in case of error free signal reception and also fail to show the specific way to do this. Stengel et al propose a solution according to which a better receiving mode is initiated immediately after detection of a good signal quality for a certain period of time. So, according to Stengel et al, the better receiving mode is held even if the signal quality gets worse during this period for time. After the predetermined period of time, the receiving mode is changed irrespective of the signal quality (see Stengel et al, column 6, lines 41-52).

The secondary reference to Vogt et al shows a radio receiver which checks the signal level of the received signal. Depending on the signal level, filter means are switched. Vogt et al show a radio apparatus in which at least one parameter of the receiver part is switched when a signal level exceeds a certain value. Therefore, Vogt et al also fail to disclose the solution of checking the signal quality for a certain predetermined time and lowering a parameter of the receiver part when the signal quality is good for this predetermined time.

The patent to Okada et al discloses a radio-telephone and paging device. The device operates as a paging device in case of low battery voltage or poor communication channel quality. Poor quality is determined by averaging the quality over a period of time. In other words, according to Okada et al, the device operation is changed to a paging operation when an average value of a quality signal is lower than a threshold and the operation is changed to a telephone operation when an average value of a quality signal exceeds a threshold.

"Averaging means" indicates that there might be several quality signals exceeding the threshold; the average value, however, remains lower than the threshold. Okada et al presents a suitable solution for a device switching between two different operation modes (paging and telephone).

The present invention as defined in claim 15 of the present application comprises a radio apparatus having at least two different values for a specific parameter. There are not two different operation modes as disclosed by Okada et al. Further, claim 15 defines that in the event of defective signal reception, the parameter is increased in a short time (in order to improve the reception), whereas in the case of error-free reception for a predetermined time the parameter is lowered again (see Figure 2, steps 220, 245-255; 26, 265). In addition, according to claim 15, when there is a defective reception, the predetermined time for error-free reception is started again. Claim 15 does not define any "averaging".

If the practitioner were to combine the above three references as proposed in the Office Action, he still would not be lead to the present invention. Rather, the resulting device would be a radio device in which, after the predetermined period of time, the receiving mode is changed irrespective of the signal quality and in which the signal quality is not checked for a certain predetermined time in order to lower a parameter of the receiver part when the signal quality is good for this predetermined time. The resulting device also would average many signals before changing any parameters.

This device resulting from combining the references obviously is not defined by claim 15 of the present application. The Applicants submit further that the rejection of claims 15 under Section 103 constitutes impermissible hindsight. To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge is to fall victim to the insidious effect of a hindsight syndrome, wherein that which only the inventor taught is used against its teacher. ***W.L. Gore & Asocs., Inc. v. Garlock, Inc.***, 220 USPQ 303, 312-13 (Fed. Cir. 1983).

For the reasons set forth above, the Applicants respectfully submit that claim 15, along with its dependent claims 16-31 is patentable over the cited reference combinations. The Applicants further request withdrawal of the rejections under 35 U.S.C. 103 and reconsideration of the application as herein amended.

In light of the foregoing arguments in support of patentability, the Applicants respectfully submit that this application stands in condition for allowance. Action to this end is courteously solicited.

Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully submitted



Michael J. Striker
Attorney for Applicant
Reg. No.: 27233
103 East Neck Road
Huntington, New York 11743
631-549-4700